

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL HOME LOAN MORTGAGE  
COMPANY,

Plaintiff,

v.

PAUL A FRYE, et. al

Defendants.

CASE NO. C15-324 MJP

ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND

THIS MATTER comes before the Court on Plaintiff's motion to remand. (Dkt. No. 6.)  
Having reviewed the motion and record, and noted the absence of any opposition, the Court  
GRANTS the motion and REMANDS this matter to state court.

**Background**

This is an unlawful detainer action. On June 20, 2014, Plaintiff acquired title to real  
property located at 29020 23rd Place South, Federal Way, WA 98003 at a nonjudicial  
foreclosure sale. (Dkt. No. 6 at 1.) The Trustee's Deed to the property was issued to Plaintiff on  
June 25, 2014. (Dkt. No. 1-2 at 7-11.) Plaintiff filed suit against Defendants in King County

1 Superior Court on December 29, 2014. (Dkt. No. 1-2 at 27.) Defendants were served with  
2 summons and complaint in this matter on January 20, 2015. (Dkt. No. 6 at 1.) On March 3,  
3 2015, Defendants removed this case to the District Court for the Western District of Washington.  
4 (Dkt. No. 1.) Plaintiff moves to remand this case to state court on the grounds that this Court  
5 lacks jurisdiction. (Dkt. No. 6.) Defendants have filed no opposition to the motion. Under  
6 Local Rule CR 7(b)(2), “. . . if a party fails to file papers in opposition to a motion, such failure  
7 may be considered by the court as an admission that the motion has merit.” The Court construes  
8 Defendants’ failure to respond as an admission that Plaintiff’s motion has merit.

### 9 **Discussion**

#### 10 **A. Legal Standard**

11 A defendant may remove an action to federal court based on federal question jurisdiction  
12 or diversity jurisdiction. 28 U.S.C. § 1441. However, “[i]t is to be presumed that a cause lies  
13 outside [the] limited jurisdiction [of the federal courts] and the burden of establishing the  
14 contrary rests upon the party asserting jurisdiction. The strong presumption against removal  
15 jurisdiction means that the defendant always has the burden of establishing that removal is  
16 proper, and that the court resolves all ambiguity in favor of remand to state court.” Hunter v.  
17 Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009) (internal quotation marks and citations  
18 omitted).

#### 19 **B. Defendants’ Removal Notice**

20 Defendants appear to treat their removal notice as a complaint and attempt to assert  
21 counter-claims against Plaintiff by means of the removal notice. (Dkt. No. 1.) The Court  
22 advises Defendants that this form is improper. Defendants cannot assert counter-claims in a  
23  
24

1 removal notice; therefore, any counter-claims asserted in the removal notice do not establish  
2 jurisdiction.

### 3 **C. Diversity Jurisdiction**

4 Defendants have not established diversity jurisdiction. Diversity jurisdiction requires  
5 complete diversity of citizenship between the parties and an amount in controversy in excess of  
6 \$75,000. 28 U.S.C. §1332. Plaintiff seeks issuance of a Writ of Restitution so that it may obtain  
7 possession of property that Defendants no longer own, because a foreclosure sale has taken  
8 place. (Dkt. No. 1-2 at 5.) Plaintiff argues it is not seeking rents or attorney's fees from  
9 Defendants and that "even if [it] were, it would not be enough to meet the monetary  
10 requirement." (Dkt. No. 6 at 3.) Defendants fail to provide any explanation in their notice of  
11 removal as to why the amount in controversy would exceed \$75,000 in this unlawful detainer  
12 action. (Dkt. No. 1 at 1-2) ("This is an action for possession of property, as well as damages that  
13 exceed \$75,000.00.") Because Defendants fail to establish that the amount in controversy  
14 requirement is met and because it does not appear, from Plaintiff's complaint, that the amount in  
15 controversy requirement can be satisfied in this case, (See Dkt. No. 1-2), removal based on  
16 diversity jurisdiction is improper.

### 17 **D. Federal Question Jurisdiction**

18 Likewise, Defendants have not established federal question jurisdiction. 28 U.S.C. §1331  
19 provides that federal district courts have original jurisdiction over "all civil actions arising under  
20 the Constitution, laws, or treaties of the United States." Here, Plaintiff's claim is strictly based  
21 on state law. (Dkt. No. 1-2 at 2-3) (citing RCW 61.24.060, 59.12.) Therefore, removal based on  
22 federal question jurisdiction is improper.

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**Conclusion**

Because it lacks jurisdiction, the Court GRANTS Plaintiff's motion and remands this case to state court. The Court DENIES Defendant Paul A. Frye's pending motion for leave to proceed in forma pauperis as moot, (Dkt. No. 5).

The clerk is ordered to provide copies of this order to all counsel.

Dated this 1st day of April, 2015.



Marsha J. Pechman  
United States District Judge